

[ORAL ARGUMENT NOT YET SCHEDULED]

No. 25-1004

**In the United States Court of Appeals
for the District of Columbia Circuit**

UNITED STATES STEEL CORPORATION et al.,

Petitioners,

v.

THE COMMITTEE ON FOREIGN INVESTMENT IN THE UNITED STATES et al.,

Respondents

(On Petition for Review of Decisions of the Committee on Foreign Investments in
the United States and the President of the United States,)

**BRIEF OF *AMICI CURIAE*
LOCAL GOVERNMENTAL OFFICIALS AND LOCAL UNION MEMBERS
(listed on following page)
IN SUPPORT OF PETITIONERS AND THE PETITION FOR REVIEW**

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**CERTIFICATE AS TO PARTIES, RULINGS,
RELATED CASES AND SEPARATE BRIEF**

Pursuant to Circuit Rules 28(a)(1) and 29(d), undersigned counsel for *Amici* certifies the following:

A. Except for the following, all parties, intervenors, and *amici* appearing in this Court are listed in the Brief for Petitioners and Petitioners' January 7, 2025 certificate:

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R. Scott Adams, Mayor, City of Duquesne, Pennsylvania
James Beisler, Mayor, Borough of Lincoln, Pennsylvania
Frank Bivins, President, Board of Commissioners, North Versailles Township,
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Barry Boucher, Mayor, Borough of Elizabeth, Pennsylvania
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Kevin McKelvey, Mayor, Borough of Dravosburg, Pennsylvania

Ina Jean Marton, Mayor, Borough of White Oak, Pennsylvania
Larry Sikorski, Mayor, Borough of Liberty, Pennsylvania.
Deneen Swartzwelder, Mayor, Borough of Swissvale, Pennsylvania
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Troy Stephenson, Treasurer, USW Local 2227 – Irvin Works
Richard Tikey, Vice President, USW Local 1557 – Clairton Works
Andy Macey, USW Local 1557 – Clairton Works
Glenn Thomas, Former President, USW Local 1219 – Edgar Thomson Works
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Works

B. References to the rulings at issue appear in the Brief for Petitioners.

C. There are no related cases in this Court or in any other court.

D. This separate brief is necessary because it reflects a perspective not found in the parties' briefs or (to counsel's knowledge) in any other *amicus* briefs.

Amici are local governmental officials and local union officials with first-hand knowledge of the practical importance of the proposed U. S. Steel/Nippon Steel transaction to the communities and workers they represent, and the consequences that will ensue depending upon how the Court resolves the pending Petition for Review. Because *Amici* are not aware of any other amicus briefs presenting this unique perspective, counsel certifies pursuant to Circuit Rule 29(d) that joinder in a single brief with other *amici* would be impracticable.

February 10, 2025

/s/ Paul K. Stockman

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GLOSSARY

AR = Administrative Record

CFIUS = Committee on Foreign Investment in the United States

DPA = The Defense Production Act, 50 U.S.C. §§ 4501 *et seq.*

“Mon Valley” = the Monongahela River valley, southwest of Pittsburgh in western Pennsylvania

USW = United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union

STATUTES AND REGULATIONS

Applicable statutes and regulations are contained in the Addendum to the Brief of Petitioners.

IDENTITY OF *AMICI*, THEIR INTERESTS, AND SOURCE OF THEIR AUTHORITY TO FILE

Amici are a bipartisan group of local governmental officials representing municipalities in the Monongahela Valley of Allegheny County, Pennsylvania or for the City of Gary, Indiana, or are U. S. Steel employees and officers or members in USW Locals 2227, 1557, and 1219, which represent unionized steelworkers working at, respectively, U. S. Steel's Irvin Works in West Mifflin, Pennsylvania, Clairton Works in Clairton, Pennsylvania, and Edgar Thomson Works in Braddock and North Braddock, Pennsylvania. *Amici* write, in their individual capacities, in support of the proposed U. S. Steel/Nippon Steel Transactions.

It is *Amici* and their constituents who will bear the ultimate consequences of any decision the Court makes in this case. For *Amici* and their constituents, the pending Petition for Review is not an abstract debate over the statutes governing CFIUS's review, CFIUS's fidelity to those laws, or of the substance of CFIUS's decision making. Rather, the outcome of this Petition for Review will have an immediate and long-lasting impact on the success of *Amici's* communities and on the well-being of the individuals that turn to *Amici* for representation and support, and that in turn will harm the very national security interests that Respondents claim to be protecting.

Some *Amici* represent communities where U. S. Steel currently has manufacturing facilities, whose tax bases are dependent upon the continuance of steelmaking in their cities or boroughs, and whose local economies rely on the spending power of U. S. Steel and its employees and contractors:

- *Amicus* **Delia Lennon-Winstead** is Mayor of the Borough of Braddock and *Amicus* **Cletus Lee** is the Mayor of the Borough of North Braddock, Pennsylvania. Since 1873, Braddock and North Braddock have been the home of U. S. Steel's Edgar Thomson Works, Andrew Carnegie's first steel mill and the Mon Valley Works' blast furnace, basic oxygen furnace, ladle metallurgy, and continuous casting operations.
- *Amicus* **Rich Lattanzi** is Mayor of the City of Clairton, Pennsylvania, the home of U. S. Steel's Clairton Coke Works. The Clairton Works – the largest coke plant in North America – supplies coke for use in U. S. Steel's blast furnaces, and coke oven gas for use throughout the Mon Valley Works. Steelmaking operations began in Clairton as early as 1903, and U. S. Steel and its predecessors have been conducting steelmaking operations at Clairton since 1916.
- *Amicus* **Chris Kelly** is Mayor of the Borough of West Mifflin, Pennsylvania, the home of Irvin Works. Irvin Works – which sits on a hilltop overlooking the Monongahela River – opened in 1938, and houses the Mon Valley Works' hot strip mill, pickle lines, cold reduction mill, continuous annealing line, batch, and open-coil annealing facilities, temper mill, and hot-dip galvanizing lines, as well as the #11 Shear Line and #17 Recoil line.
- *Amicus* **Rob Falce** is the Mayor of the Borough of Munhall, Pennsylvania. U. S. Steel's Research and Technology Center is located in

Munhall, and stands to benefit (should the transaction proceed) from Nippon Steel's active R&D program.

- *Amicus* **Eddie Melton** is the Mayor of the City of Gary, Indiana, home to U. S. Steel's Gary Works since 1906. At one time, Gary Works was the largest steel mill in the world, and it remains the largest integrated mill in North America and U. S. Steel's largest manufacturing facility, with an annual capacity of 8.2 million tons.

Other *Amici* represent towns that formerly hosted U. S. Steel facilities, and who know firsthand the economic devastation that accompanies the closure of a steel mill.

- *Amicus* **John Burwell** is the Mayor of the Borough of Homestead, Pennsylvania, *Amicus* **Joelisa McDonald** is Mayor of the Borough of Rankin, Pennsylvania, and *Amicus* **Deneen Swartzwelder** is Mayor of the Borough of Swissvale, Pennsylvania. Their communities were once the home of U. S. Steel's massive and historic Homestead Works; Homestead Works stood along both banks of the Monongahela from 1881 until 1986, when it permanently closed. At one point, it employed 15,000 workers, but now its principal remnants are Carrie Furnace (a former blast furnace, now a historical landmark, in Rankin and Swissvale) and twelve smokestacks in what is now the parking lot of a shopping center.
- *Amicus* **R. Scott Adams** is Mayor of the City of Duquesne, Pennsylvania, which once housed U. S. Steel's Duquesne Works (home of the world's largest blast furnace, the legendary "Dorothy Six"), but

which has been designated a financially distressed municipality by the Commonwealth of Pennsylvania since 1991.

- *Amicus* **Michael Cherepko** is Mayor of the City of McKeesport, Pennsylvania. From 1872, McKeesport was home to National Tube Works, which became part of U. S. Steel at the company's founding, and which supported McKeesport's economy until its closure in 1987. McKeesport's population is now less than one-third of its population at the height of its success.

Even though these *Amici*'s communities no longer host U. S. Steel facilities, they rely on the economic contributions of U. S. Steel and its employees in the Mon Valley.

Other *Amici* represent local governments in the vicinity of U. S. Steel's three Mon Valley Works operations in southwestern Pennsylvania:

- *Amicus* **Markus Adams** is Mayor of the Borough of East Pittsburgh, Pennsylvania, a community adjoining the Edgar Thomson Works.
- *Amicus* **James Beisler** is Mayor of the Borough of Lincoln, Pennsylvania, which lies directly across the Monongahela River from Clairton Works.
- *Amicus* **Frank Bivins** is President of the Board of Commissioners of North Versailles Township, Pennsylvania. North Versailles is located on the east bank of the Monongahela River, immediately adjoining Edgar Thomson Works.

- *Amicus* **Barry Boucher** is the Mayor of the Borough of Elizabeth, Pennsylvania, located south of the Clairton Works on the east bank of the Monongahela River.
- *Amicus* **Jack Brown** is Mayor of the Borough of Braddock Hills, Pennsylvania, located north of (and, as the name suggests, uphill from) the Edgar Thomson Works.
- *Amicus* **David Depretis** is Mayor of the Borough of Baldwin, Pennsylvania, a suburban community located west of the Mon Valley Works.
- *Amicus* **Tom DeRosa** is Chairman of the Board of Supervisors of Forward Township, Pennsylvania, located south of the Clairton Works on the east bank of the Monongahela River.
- *Amicus* **Keith DiMarco** is Mayor of the Borough of Glassport, Pennsylvania, located across the Monongahela River from Clairton Works.
- *Amicus* **Adam Forgie** is Mayor of the Borough of Turtle Creek, Pennsylvania, located northwest of Edgar Thomson Works.
- *Amicus* **Robert Howard** is Mayor of the Borough of East McKeesport, Pennsylvania, located east of Edgar Thomson Works overlooking the Mon Valley and Turtle Creek Valley.
- *Amicus* **Brien Hranics** is the Mayor of the Borough of Port Vue, Pennsylvania, a community across the Monongahela River from U. S. Steel's Irvin Works.

- *Amicus* **Gregory Jakub** is Mayor of the Borough of Wilmerding, located east of Edgar Thomson Works.
- *Amicus* **Dawn Jensen** is Mayor of the Borough of Whitaker, Pennsylvania, located along the banks of the Monongahela River downstream of the Mon Valley Works facilities, and adjacent to the former Homestead Works.
- *Amicus* **Roy R. Lawson, Jr.** is President of the Board of Commissioners of South Versailles Township, Pennsylvania, a community on the banks of the Youghiogheny River upstream from its confluence with the Monongahela, east of Clairton Works and southeast of Irvin Works.
- *Amicus* **Carrie McCaffrey** is Mayor of the Borough of Jefferson Hills, Pennsylvania, a suburban municipality just east of Clairton Works and just south of Irvin Works.
- *Amicus* **Kevin McKelvey** is Mayor of the Borough of Dravosburg, Pennsylvania, a community just north of the Irvin Works along the west bank of the Monongahela River.
- *Amicus* **Ina Jean Marton** is Mayor of the Borough of White Oak, Pennsylvania, a community east of the Monongahela that is positioned between Edgar Thomson Works to the north, Irvin Works to the west, and Clairton Works to the southwest.
- *Amicus* **Larry Sikorski** is Mayor of the Borough of Borough, Pennsylvania, a community along the banks of the Youghiogheny River just east of Irvin works and just north of Clairton Works.

- *Amicus* **Bill Trimbath** is Mayor of the Borough of Pleasant Hills, Pennsylvania, a suburban community in the hills west of the Monongahela River.
- *Amicus* **Josh Walls** is President of the Board of Commissioner of Elizabeth Township, Pennsylvania, a rural and suburban community east of the Monongahela River near the Mon Valley Works.

Many U. S. Steel employees live in these *Amici*'s communities, and these communities are dependent upon U. S. Steel's direct and indirect economic contributions (through employee wage taxes, sales taxes on employee and U. S. Steel purchases, employee support of the local real estate tax base, and the like). Many of these mayors, commissioners, and supervisors also have first-hand experience with the consequences of industrial decline: for example, Westinghouse Electric was once located in East Pittsburgh, Turtle Creek and Wilmerding and was a major employer in those communities. Westinghouse's decline, and the ultimate closure of its manufacturing facilities in the Turtle Creek valley in 1988, had catastrophic effects on East Pittsburgh, Turtle Creek, Wilmerding, and their citizens.

The remaining *Amici* are steelworkers and USW members.

- *Amici* **Jack Maskil, Jason Zugai** and **Troy Stephenson** are President, Vice President, and Treasurer, respectively, of USW Local 2227, and in that capacity have committed to represent the interest of approximately 900 local union members at Irvin Works. *Amici* Maskil and Zugai are mobile equipment trainers at Irvin Works who each have worked for U. S. Steel for nearly twenty-eight years. *Amicus* Stephenson – a fourth-

generation steelworker and pipefitter by trade— works as a hybrid operating technician/mechanical maintenance repairman, and has twenty-seven years of experience with U. S. Steel.

- *Amicus* **Richard Tikey** is Vice President of USW Local 1557, representing approximately 700 steelworkers at Clairton Works, and *Amicus* **Andy Macey** is a union steelworker and utilities maintenance mechanical repairman at Clairton Works. *Amicus* Tikey has worked for U. S. Steel for 26 years. *Amicus* Macey has forty-four years of service with U. S. Steel, starting in 1977 (with a hiatus from 1984 to 1989 after U. S. Steel’s National Tube Works in McKeesport closed).
- *Amici* **Glenn Thomas** and **Richard Zeek, Jr.** are steelworkers at Edgar Thomson Works, and are (respectively) the former President and Vice President of USW Local 1219; in that capacity, they represented approximately 600 union steelworkers at Edgar Thomson. *Amicus* Thomas, with twenty-six years at U. S. Steel, works as utilities coordinator at the powerhouse, and *Amicus* Zeek is the First Man at Edgar Thomson’s “BOP Shop” (the basic oxygen process facilities).

Perhaps more than any other participants in this matter, these *Amici* have the most at stake, because their livelihoods depend on the continued success of U. S. Steel’s Mon Valley Works.

Pursuant to Federal Rule of Appellate Procedure 29(a)(2) and Circuit Rule 29(b), *Amici* state that all parties consent to the filing of this brief, pursuant to

electronic mail exchanges on February 3, 2025 between undersigned counsel and counsel for Petitioners and Respondents.

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), *Amici* state (i) that no party's counsel authored this brief, in whole or in part; (ii) that no party or party's counsel contributed money that was intended to fund preparing or submitting the brief; and (iii) that no person other than *Amici* contributed money that was intended to fund preparing or submitting the brief. Counsel for *Amici* are preparing and submitting this brief *pro bono publico*.

SUMMARY OF ARGUMENT

CFIUS and former President Biden – in order to effect a preordained result – wholly failed to consider the evidence that the U. S. Steel/Nippon Steel merger would pose no threat to the national security. In fact, the decisions at issue here actually would damage national security if they were allowed to remain: by ignoring Nippon Steel's commitments, which would have ensured the prosperous future of U. S. Steel's domestic blast furnace operations, the decisions (if upheld) would irreparably undermine American steelmaking capability. And, from *Amici's* unique perspective, the decisions under review threaten the economic health (indeed, effective survival) of the communities in which U. S. Steel operates, including those communities in the Monongahela River valley southeast of Pittsburgh and in northwest Indiana in which *Amici* and their constituents and colleagues live and work.

The importance of U. S. Steel's continued viability and success in these vital industrial corridors cannot be overstated, and Nippon Steel alone has the capacity and will to ensure that legacy U. S. Steel blast furnaces and related operations remain in active operation for years to come. CFIUS's and the former President's decision to prohibit the U. S. Steel/Nippon Steel transaction, by contrast, threatens to destroy the very steel mills that the decision purports to protect, devastating the economic vitality of these critical industrial corridors, whose economic well-being is essential to the national defense. Further, it does so by running roughshod over the rule of law, subordinating governing statutory standards to naked political calculations. Therefore, *Amici* write in support of Petitioners, and ask the Court to vacate CFIUS's actions and the President's order blocking the U.S. Steel/Nippon Steel transaction.

ARGUMENT

As Petitioners have explained, and as *Amici* agree, CFIUS's and former President Biden's disapproval of the U. S. Steel/Nippon Steel transaction was based upon a premature and improper political calculation, was plagued by substantive and procedural irregularities, was ultimately grounded upon speculation that flew in the face of the undisputed facts of record, and that ignored relevant evidence, all in order to reach a result that was foreordained before the process even began. *Amici* also agree with Petitioners that CFIUS's and former President Biden's decisions thus contravened the governing provisions of the Defense Production Act ("DPA"), 50 U.S.C. § 4565, and the Administrative Procedure Act, 5 U.S.C. §§ 500 *et seq.*, ran afoul of the Fifth Amendment's procedural protections, and exceeded the proper scope of Presidential authority. *Amici* will not repeat the arguments made cogently in Petitioners' brief.

Rather, *Amici* write separately to provide further important context that was presented to CFIUS (and that is in the administrative record), but that CFIUS and former President Biden wholly ignored. As the law makes clear, a transaction may be suspended or prohibited *only* if there is "credible evidence" that the transaction "threatens to impair the national security" and that there are no other legal avenues to protect the national security. 50 U.S.C. § 4565(d)(4). In this case, CFIUS and former President Biden – in their eagerness to further the President's predetermined political judgment – not only failed to consider the evidence that the U. S. Steel/Nippon Steel merger would pose no threat to the national security, but also ignored the fact that their actions would actually **harm** national security, by causing irreparable damage to

American steelmaking and (in so doing) to two of the Nation's most vital industrial corridors: the Monongahela Valley and the northwestern Indiana lakeshore. The Mon Valley and northwest Indiana have long been among the United States' key "arsenals of democracy" (as Franklin D. Roosevelt so aptly put it), but CFIUS's and the former President's decisions have placed their future in jeopardy. The threat to America's steelmaking capacity, in its historical heartlands, is "an important aspect of the problem" that CFIUS "entirely failed to consider," *Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983), and as such is arbitrary, capricious, and invalid at its core.¹

I. U. S. Steel's Continued Viability Is Critical to the Long-Term Sustainability of *Amici's* Communities, and Thus the National Security.

The importance of U. S. Steel to *Amici's* communities is hard to overstate. In 2023, U. S. Steel directly employed 3,703 workers in Pennsylvania,² and Gary Works

¹ See also *Ohio v. E.P.A.*, 603 U.S. 279, 293 (2024) ("an agency cannot simply ignore an important aspect of the problem" (cleaned up)); *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 30 (2020); *Michigan v. E.P.A.*, 576 U.S. 743, 752 (2015).

² See U. S. Steel, "U. S. Steel and Pennsylvania," <https://www.ussteel.com/documents/40705/4880602/USS+PA+Economic+Impact+Study.pdf/1ca6c391-47c5-9c90-fe65-cd6a6d5f3d4c?t=1698605910473> [hereinafter, "U. S. Steel & Pa."], cited and discussed in William Chou & Paul Sracic, "The Real Deal for US Steel: A Comprehensive Analysis of the Nippon Steel-US Steel Purchase," at 9, <https://www.hudson.org/economics/real-deal-us-steel-comprehensive-analysis-nippon-steel-us-steel-purchase-william-chou-paul-sracic> (AR#88) [hereinafter "The Real Deal"].

Note that *Amici* cite only to materials that are available publicly, either because they are available online or are included in the Appendix, even though certain of these materials (based on the index filed with the Court) appear also to be included in the sealed portion of the administrative record as filed with this Court. Materials that are

(footnote continued)

(including the nearby Midwest plant) last year employed approximately 4,500.³ Direct employment, however, substantially understates the overall economic impact of U. S. Steel's operations: a 2023 study indicated that U. S. Steel supported and sustained a total of 11,417 jobs in Pennsylvania alone through its operations and through purchases in the local supply chain, including 7,714 indirect jobs. This resulted in \$3.6 billion in total economic impact, and generated \$138.2 million in state and local taxes⁴

In some places, that impact is even more dramatic. For example, the City of Clairton draws thirty percent of its tax revenue from U. S. Steel.⁵ As *Amici* Mayors Lennon-Winstead, Lattanzi, Falce, Lee and Kelly wrote in a December 13, 2024 letter to the members of CFIUS:

Our communities have grown and persevered for over a century in the shadow of America's steel mills, with U. S. Steel serving as a cornerstone of our regional identity, economic vitality, and working-class heritage.

included in the Appendix are cited thereto; other materials in the record are cited with a parenthetical to the document number in the administrative record as set out in the Certified Index of the Unclassified Administrative Record submitted to this Court on January 21, 2025. When materials in the administrative record were filed under seal, this brief also includes a citation to a publicly-accessible location for the source.

³ See Maya Wilkins, *Gary Mayor Eddie Melton, Nippon Executive Meet to Talk Steel Deal*, Chicago Tribune, Dec. 12, 2024, <https://www.chicagotribune.com/2024/12/12/mayor-melton-nippon-executive-meet-in-gary-to-talk-steel-deal/> (included in AR#566).

⁴ See "U. S. Steel & Pa.," *cited and discussed in* "The Real Deal," at 9 (AR#88).

⁵ See "The Real Deal," at 9 (AR#88).

....

Our schools, roads, police, fire, and parks departments all rely on the tax revenues and economic activity spurred by U. S. Steel's Mon Valley Works mill.⁶

As a result, the U. S. Steel/Nippon Steel transaction – in the words of *Amicus* Jason Zugai – necessarily “affects our jobs, our families, and our communities.”⁷

This is not just a matter of local significance, however: the Mon Valley and northwest Indiana are key industrial corridors whose contributions to the national economy and national defense have been key to the United States' success. The aggregated manufacturing knowhow and hard-won experience of the engineers and skilled workers concentrated in these two regions cannot be duplicated elsewhere at any cost. But this accumulated expertise is fragile: once the manufacturing base needed to support these economies of scale has fragmented or disappeared, these human resources scatter to the four winds, and the associated beneficial agglomeration effects are lost forever.

II. The U. S. Steel/Nippon Steel Transaction Would Guarantee the Future of Steelmaking in the Mon Valley and Gary.

The U. S. Steel/Nippon Steel transaction would ensure that the Mon Valley's and northwest Indiana's 150-year steelmaking heritage continues into the future.

⁶ Letter from Delia Lennon-Winstead *et al.* to Janet Yellen *et al.*, Dec. 13, 2024 (AR#567).

⁷ Jack Troy, *Chorus to Approve U.S. Steel-Nippon Deal Grows Louder*, TRIB Live, Dec. 12, 2024, <https://triblive.com/local/regional/chorus-to-approve-u-s-steel-nippon-deal-appears-to-be-growing/> (included in AR#565).

Nippon Steel has made binding commitments to invest billions of dollars in Gary Works, the Mon Valley Works, and other U. S. Steel facilities, including:

- \$1 billion to enhance Mon Valley Works, including the upgrade or replacement of the 1938-vintage hot strip mill at Irvin Works;
- \$300 million to revamp Gary Works' largest blast furnace, Blast Furnace #14, along with additional funds to upgrade Blast Furnaces #4 and #8; and
- At least \$1.4 billion in capital expenditures across U. S. Steel's union-represented facilities (now estimated to reach \$1.6 billion).⁸

These investments will not happen if the U. S. Steel/Nippon Steel transaction does not close.⁹ Indeed, Nippon Steel was the only bidder in U. S. Steel's strategic alternatives review that could make such commitments.¹⁰

The direct and indirect economic impact of the Pennsylvania investments alone ranges from \$476.4 million to \$952.9 million (depending on the percentage of construction dollars spent within the Commonwealth). And in Pennsylvania alone, Nippon Steel's investments are estimated to generate 2,432 to 4,864 jobs, and \$19.1 million to \$38.3 million in local tax revenues.¹¹

⁸ See App. 335, 346, 447, 448, 523.

⁹ See, e.g., App. 523, 544.

¹⁰ See, e.g., App. 551.

¹¹ See U. S. Steel, "Nippon Steel Investment Would Generate Incremental Economic Impact of Nearly \$1 Billion in Pennsylvania Beyond Base Investment," Oct. 1, 2024, <https://investors.ussteel.com/news-events/news->

(footnote continued)

Nippon Steel has also made other commitments that will ensure the success of Gary Works, the Mon Valley Works, and other U. S. Steel facilities. For example, Nippon Steel:

- has promised to maintain production capacity at its United States production locations;
- has agreed not to reduce capacity for ten years at the Mon Valley Works and Gary Works (with substantial constraints, even thereafter, on Nippon Steel's ability to reduce capacity into the future);
- has promised not to implement layoffs or plant closures during the term of the USW Basic Labor Agreement; and
- has agreed to transfer technology and knowhow that will position U. S. Steel to succeed in the future, including technology to reduce substantially carbon dioxide emissions from blast furnaces.¹²

In light of these benefits, *Amici* have wholeheartedly supported the transaction. For example, *Amicus* Mayor Melton on December 12, 2024 stood before his constituents “to share my perspective on this, and my support for this deal and why it’s important for the city of Gary.” Mayor Melton concluded that “for the city, this

releases/detail/698/nippon-steel-investment-would-generate-incremental-economic (AR#480); Parker Strategy Group, “Projected Economic Impact of \$1 Billion Investment by Nippon Steel Corporation into U. S. Steel’s Southwestern Pennsylvania Operations,” Oct. 1, 2024, https://cdn.prod.website-files.com/657c753df917ef83a31f840c/66fc05b87585008fb2a1f212_Nippon%20Steel%20%241B%20Investment%20PA%20Economic%20Impact%20Study.pdf (AR#480).

¹² See App. 346-347, 523, 551-552.

partnership would mean so much.”¹³ Similarly, county commissioners from southwestern Pennsylvania supported the transaction, calling it a “transformative opportunity” because it preserves U. S. Steel’s “legacy while leveraging Nippon Steel’s advanced manufacturing capabilities.” These “assurances,” the commissioners noted, “resonate deeply within our counties, which have long relied on the steel industry as an economic cornerstone.”¹⁴ As *Amicus* Jason Zugai summarized, “[t]his incredible deal will solidify all of our jobs for decades to come.”¹⁵

III. If the Proposed U. S. Steel/Nippon Steel Transaction Is Blocked, the Consequences for Steel Production in, and the Livelihood of, the Mon Valley and Gary Would Be Catastrophic; This Would Have a Long-Term Detrimental Effect on National Security.

By contrast, the future of steel production in Gary and the Mon Valley will be dire if this Court upholds former President Biden’s and CFIUS’s decision to block the U. S. Steel/Nippon Steel merger. Under either option – regardless of whether U. S. Steel continues as a standalone company or is acquired by another purchaser – the future of steelmaking in the Mon Valley and northwest Indiana would be in serious jeopardy.

¹³ Joseph S. Pete, *Nippon Steel Plans to Invest Nearly \$1 Billion in Gary Works If U.S. Steel Deal Goes Through*, Times of Northwest Ind., Dec. 12, 2024, https://www.nwitimes.com/article_7c1cd286-b8dc-11ef-913f-0b8d8e1d5c65.html (included in AR#565).

¹⁴ Letter from Patrick J. Catena, *et al.*, to Janet Yellen, *et al.*, Dec. 15, 2024 (AR#84).

¹⁵ Ricky Sayer, *U.S. Steel Employees Rally in Support of Proposed Sale to Nippon Steel*, KDKA, Dec. 12, 2024, <https://www.cbsnews.com/pittsburgh/news/u-s-steel-union-employees-rally-support-nippon-steel-deal/> (included in AR#566).

U. S. Steel has been blunt about “the very real constraints” that it has been operating under, and “the very real consequences to U. S. Steel” if the Nippon Steel transaction does not proceed: “U. S. Steel will be left financially battered,” and “will be forced to revert to its pre-Transaction strategy to be ‘better, not bigger’ by adding capacity and capabilities at its [Electric Arc Furnace] facilities in Arkansas while idling its blast furnace facilities.”¹⁶ The follow-on effects of this are “crystal clear”:

- “In Indiana, pre-transaction, U. S. Steel had already planned to idle its largest blast furnace – #14 at Gary Works. If this Transaction falls apart, it will move forward with that idling.”
- “In Illinois, but for the pending Transaction, U. S. Steel would have permanently idled Granite City Works.”
- “[W]ithout the \$1 billion upgrade from Nippon Steel, the future of Pittsburgh’s Mon Valley Works looks like those of U. S. Steel’s other facilities that have closed.” In other words, “the inevitable outcome of a decision by President Biden to block the Transaction will be the eventual idling of Mon Valley Works” and “no steelmaking in Pennsylvania.” More bluntly, absent a favorable ruling from this Court, “**steelmaking in the Mon Valley has an expiration date.**”¹⁷

¹⁶ App. 527, 531; *see also* App. 528, 551-552, 561, 565, 568, 577.

¹⁷ App. 523-524, 525 (emphasis added); *see also* App. 528, 534, 550, 551, 568, 577-578.

As U. S. Steel has explained, “[t]hese are not threats.” Rather, “[t]his is the reality that U. S. Steel will confront if the Transaction is blocked.”¹⁸

The outcome is no more optimistic if U. S. Steel is purchased by a third party. There is no evidence in the record to suggest that any other purchaser (or purchasers) could make the kind of financial commitments to Mon Valley Works and Gary Works that Nippon Steel has bound itself to make. As U. S. Steel told CFIUS:

U. S. Steel will face intense pressure from its shareholders to return capital in the form of dividends and buybacks, and U. S. Steel has received feedback that activist investors have built up positions in its stock in anticipation of deal failure. These activist shareholders have no concern for the longterm viability of U. S. Steel and will be glad to see U. S. Steel scrapped for parts, which is the most likely outcome of another sale process, given that Nippon Steel was the only buyer capable of keeping U. S. Steel together. Such an outcome would put in motion the end of steelmaking in Western Pennsylvania.¹⁹

As Brian Pavalack, a third-generation steelworker, summarized, “Without this deal with Nippon Steel, we will be the last generation to work here at this historic steel plant.”²⁰

¹⁸ App. 524, 550.

¹⁹ App 550; *see also* App. 529 (“As U. S. Steel has repeatedly emphasized, Nippon Steel is the *only* bidder that was committed to maintaining U. S. Steel’s blast furnaces, and to supporting U. S. Steel’s ongoing growth across its enterprise.”), 577.

²⁰ Evan Robinson-Johnson, *U.S. Steel Workers Rally for Nippon Steel Deal as Executive Speaks in Gary*, Pittsburgh Post-Gazette, Dec. 12, 2024, <https://www.post-gazette.com/business/powersource/2024/12/12/clairton-steelmakers-usw-biden-gary-us-steel/stories/202412120109> (included in AR#566).

The repercussions of this would have far-reaching ripple effects. *Amici* have seen firsthand how the loss of major industrial operations has caused their communities to be shattered. Not only do family-sustaining union jobs disappear; the ancillary support businesses and storefronts catering to workers inevitably follow – these small enterprises and “mom and pop” shops that make up the fabric of a community, deprived of their customer base, would wither and die. Then, inevitably, comes depopulation, as people move away from the “Rust Belt” in search of economic opportunities. Abandoned properties, blight and hopelessness remain. For example, the Borough of Braddock had a population of 20,879 in 1920,²¹ but one hundred years later only 1,721 people resided within the borough,²² a ninety-two percent drop in population. In short, as *Amicus* Mayor Lattanzi has stated, “This is very critical. Time is running out, and this has to get done.... We have got to get this deal done. If not, the Mon Valley is dead.”²³

As already noted, once this decline sets in, it will be effectively impossible to reverse. Even now, after decades of deindustrialization, there is still a concentrated nucleus of technical knowledge and industrial experience in the Mon Valley and

²¹ See U.S. Dep’t of Commerce, Bureau of the Census, *Fourteenth Census of the United States: State Compendium – Pennsylvania* at 13 (1924), <https://www2.census.gov/library/publications/decennial/1920/state-compendium/06229686v32-37ch7.pdf>.

²² See U.S. Census Bureau, “Braddock borough,” <https://data.census.gov/profile?g=160XX00US4207992>.

²³ Evan Robinson-Johnson, *U.S. Steel Workers Rally for Nippon Steel Deal as Executive Speaks in Gary*, Pittsburgh Post-Gazette, Dec. 12, 2024, <https://www.post-gazette.com/business/powersource/2024/12/12/clairton-steelmakers-usw-biden-gary-us-steel/stories/202412120109> (included in AR#566).

northwest Indiana, a base upon which a manufacturing renaissance can build. Once this proficiency and expertise has scattered, however, it cannot be reassembled. This is not only a tragedy for *Amici* and their communities, however; it is more broadly a loss for the Nation as a whole. It will mean a decline in American steelmaking capacity and capability, contrary to the national interest and inconsistent with the national security imperative of maintaining a sound industrial base within the United States.

IV. *Amici* Mayors and Commissioners, as Local Executive Officials, Must Apply the Law Faithfully, Even If It Is Politically Difficult, and the United States Government Must Do the Same.

Finally, those *Amici* who are executive officers of their municipalities – city and borough mayors or township commissioners – write to articulate a point that, while obvious, is critical to emphasize: Following the law is important. That should not even need to be said. *Amici* all took oaths to follow the law, and on a day-to-day basis must be faithful to the commands of the law, even if it is politically difficult, even if it might alienate key constituencies, and even if it threatens their ability to be reelected.

When the President chooses not to follow the law, in misguided pursuit of a perceived political benefit, it shakes the foundational values of our nation. As local leaders, *Amici* have seen firsthand how communities can crumble if the rule of law comes into question. Part of *Amici* officeholders' central mission is to safeguard that rule of law to ensure everyone entrusted to their leadership knows that the rules apply equally to everyone – without fear or favor, as the cliché goes. For the President and

federal agencies to perceive themselves as above the law threatens that legal order and undermines all *Amici* have worked to achieve in their communities.

It is America's key inheritance from the common law, and from Enlightenment thought, that no person is above the law, and all are equally held to account. Americans have fought in life and to death to safeguard this ideal. When former President Biden took office, he swore an oath (as mandated by Article II, Section One, Clause 8, of the United States Constitution) to "preserve, protect and defend" the Constitution, and thus this foundational rule of law.

But former President Biden and CFIUS did not follow the law. The former made a premature political decision (in an effort to obtain the endorsement of USW leadership, itself subordinating its members' actual interest to a suspect insider's deal), and then CFIUS, through its political appointees, promptly fell into line. The ultimate decision was wrapped in a perverted misconstruction of the DPA. As noted above, Section 721 of the DPA does not permit the suspension or prohibition of a proposed transaction absent **specific findings** that the transaction will impair national security, based on "credible evidence." Absent that, there is no legal authority under Section 721 to block the transaction. *See* 50 U.S.C. § 4565(d)(4) (emphasis added). But former President Biden's Order contains no findings, he made no findings, and he could not make any findings when there is no evidence showing that the transaction would impair national security in any way.²⁴ Indeed, the opposite is true if the Mon

²⁴ *See* App. 151-152.

Valley Works is shuttered, and if Gary Works becomes a shell of its former self, as will ultimately be the case in the absence of Nippon Steel's investment.

Stripped of the false shield of the Defense Production Act, former President Biden's actions lack statutory justification and exceed his constitutional authority. As the Supreme Court and this Court have cautioned, "[i]t would be untenable to conclude that there are no judicially enforceable limitations on presidential actions ... so long as the President *claims* that he is acting pursuant to a statutory directive." *Mountain States Legal Found. v. Bush*, 306 F.3d 1132, 1136 (D.C. Cir. 2002) (cleaned up; quoting *Stark v. Wickard*, 321 U.S. 288, 310 (1944)). That is precisely what former President Biden did here – he claimed the protection of Section 721 of the DPA without following its rules or even identifying one reason it should apply. The Court should not be swayed by a talismanic invocation of “national security” as a justification for arbitrary and *ultra vires* Executive action; that has been the law since no later than 1952, when the Supreme Court refused to allow then-President Truman to seize steel mills. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

Such brazen disregard for the law, in the service of a pre-determined political decision (intended purely to support a reelection campaign), is anathema to our representative system of government. Former President Biden's power was as constitutionally circumscribed as *Amici's* is, those legal limits must be enforceable in a court of law, and those constraints must be enforced here.

CONCLUSION

For the foregoing reasons – to preserve the Mon Valley’s and northwest Indiana’s economic future, to protect the continued viability of American steelmaking, and to safeguard the critically important rule of law in this country – *Amici* ask this Court to GRANT the Petition for Review and hold unlawful, vacate, enjoin and set aside CFIUS’s actions and the President’s order blocking the U.S. Steel/Nippon Steel transaction; order CFIUS to review the merger consistent with a proper application of controlling legal standards; and grant further relief as appropriate.

Respectfully submitted,

February 10, 2025

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CERTIFICATE OF COMPLIANCE

1. Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the undersigned certifies that this brief complies with the type-volume limitation of Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B)(i) because it contains 5,582 words, excluding the parts of the brief excepted by Federal Rule of Appellate Procedure 32(f) and Circuit Rule 32(e)(1), calculated using the word count feature contained in Microsoft Word 365 Apps for Enterprise.

2. The undersigned certifies that this brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5)(A) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 365 Apps for Enterprise, and is set in 14-point Garamond type.

February 10, 2025

/s/ Paul K. Stockman

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